

Admin.

October 15, 2004

## Memorandum 2004-46

**2004-2005 Annual Report (Staff Draft)**

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Attached to this memorandum is a staff draft of the text of the Commission's 2004-2005 *Annual Report*. In the interest of saving photocopying and mailing costs, we have not reproduced here the various tables and appendices that are published with the annual report (e.g., text of Commission's governing statute, cumulative table of legislative action on Commission recommendations, revised Comments to legislation enacted during session, etc.). After approval of the text of the annual report, the staff will assemble the various parts and send the annual report to the printer.

**Use of Commission Materials to Determine Legislative Intent**

The annual report includes a discussion of the use of Commission materials to determine legislative intent. The report notes that preliminary materials such as staff memoranda and tentative recommendations are not presented to the Legislature and therefore are not competent evidence of legislative intent. Only the Commission's final recommendation and official Comments serve that function.

Notwithstanding this admonition, the Supreme Court, in construing the mediation confidentiality statute, quotes extensively from and relies heavily on the Commission's tentative recommendation and on staff memoranda and drafts. See *Rojas v. Superior Court*, 33 Cal. 4th 407, 93 P.3d 260, 15 Cal. Rptr. 3d 643 (2004). The court explicitly identifies these materials as part of the legislative history of the statute and determinative of legislative intent. 33 Cal. 4th at 418-21.

The effort to deter courts from improperly ascribing legislative intent to these types of preliminary materials is perhaps a losing battle. As the materials become more readily accessible on the Commission's website and from legislative intent services, it is perhaps inevitable that they will be ferreted out and wrung for whatever support a litigant can get from them.

In any event, we would expand the catalog of items that are not proper indicia of legislative intent, and recast the discussion along the following lines:

Some types of Commission materials may not properly be relied on as evidence of legislative intent. Courts have on occasion cited preliminary Commission materials such as tentative recommendations, and correspondence, and staff memoranda and drafts in support of their construction of a statute.<sup>1</sup> ~~This is not appropriate because the material is not placed before the Legislature during its consideration of the legislation.~~<sup>2</sup> While these materials may be indicative of the Commission's intent in proposing the legislation, it is only the Legislature's intent in adopting the legislation that is entitled to weight in construing the statute.<sup>32</sup> Unless preliminary Commission materials were placed before the Legislature during its consideration of the legislation, those materials are not legislative history and are not relevant in determining the Legislature's intention in adopting the legislation.<sup>3</sup>

1. See, e.g., *Rojas v. Superior Court*, 33 Cal. 4th 407, 93 P.3d 260, 15 Cal. Rptr. 3d 643 (2004) (tentative recommendation, correspondence, and staff memorandum and draft); *Yamaha Corp. v. State Bd. of Equalization*, 19 Cal. 4th 1, 12-13, 960 P.2d 1031, 1037, 78 Cal. Rptr. 2d 1, 7 (1998) (tentative recommendation). However, in some cases, proposed legislation will be based on a tentative, rather than final, Commission recommendation. See, e.g., *Estate of Archer*, 193 Cal. App. 3d 238, 243, 239 Cal. Rptr. 137, 140 (1987). In that event, reliance on the tentative recommendation is proper.

See also *Ilkhchooyi v. Best*, 37 Cal. App. 4th 395, 406, 45 Cal. Rptr. 2d 766, 772-73 (1995) (letter responding to tentative recommendation); D. Henke, California Legal Research Handbook § 3.51 (1971) (background studies).

2. ~~The Commission concurs with the opinion of the court in *Juran v. Epstein*, 23 Cal. App. 4th 882, 894 n.5, 28 Cal. Rptr. 2d 588, 594 n.5 (1994), that staff memoranda to the Commission should not be considered as legislative history.~~

3. Cf. *Rittenhouse v. Superior Court*, 235 Cal. App. 3d 1584, 1589, 1 Cal. Rptr. 2d 595, 598 (1991) (linking Commission's intent and Legislature's intent); *Guthman v. Moss*, 150 Cal. App. 3d 501, 508, 198 Cal. Rptr. 54, 58 (1984) (determination of Commission's intent used to infer Legislature's intent).

3. The Commission concurs with the opinion of the court in *Juran v. Epstein*, 23 Cal. App. 4th 882, 894 n.5, 28 Cal. Rptr. 2d 588, 594 n.5 (1994), that staff memoranda to the Commission should not generally be considered as legislative history.

## **Activities of Commission Members and Staff**

The annual report notes activities of Commission members and staff related to the Commission's work, such as speeches made and articles published during the past year. Please notify the staff if you have any activities of this nature to report.

## **Report on Statutes Repealed by Implication or Held Unconstitutional**

The annual report includes a report on statutes repealed by implication or held unconstitutional. This material has not yet been prepared. We will include it in a supplement to this memorandum.

**Editorial Suggestions**

If you have any editorial suggestions relating to the draft, please be sure to inform the staff.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

*STAFF DRAFT*

2004-2005 Annual Report

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

Cite this pamphlet as *2004-2005 Annual Report*, 34 Cal. L. Revision Comm'n Reports xxx (2004). This is publication #xxx.

## SUMMARY OF WORK OF COMMISSION

### **Recommendations Enacted in the 2004 Legislative Session**

In 2004, six bills effectuating the Commission's recommendations were enacted, relating to the following subjects:

- Alternative dispute resolution in common interest developments
- Architectural review and decisionmaking in common interest developments
- Nonsubstantive reform of civil discovery law
- Obsolete reporting requirements of state agencies
- Unincorporated association law
- Authority of court commissioner

### **Recommendations to the 2005 Legislature**

In 2005, the Commission plans to submit recommendations on the following subjects to the Legislature:

- Ownership of amounts withdrawn from joint account
- Statutory clarification and minor substantive improvement of civil discovery
- Financial privacy
- Waiver of privilege by disclosure
- Preemption of common interest development architectural restrictions
- Unincorporated association governance
- Nonprofit association tort liability
- Emergency rulemaking under the administrative procedure act

The Commission may submit additional recommendations if work is completed in time to enable their introduction during the legislative session.

### **Commission Activities Planned for 2005**

During 2005, the Commission will work on the following major topics: mechanics lien law, common interest development law,

discovery improvements from other jurisdictions, conforming the California Evidence Code to the Federal Rules of Evidence, oral argument in civil procedure, and contractual arbitration improvements from other jurisdictions. The Commission will also consider other subjects to the extent time permits.

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STATE OF CALIFORNIA

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CALIFORNIA LAW REVISION COMMISSION

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November 19, 2004

To: The Honorable Arnold Schwarzenegger  
*Governor of California*, and  
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission submits this report of its activities during 2004 and its plans for 2005.

Six bills were enacted in 2004 to effectuate Commission recommendations.

The Commission is grateful to the members of the Legislature who carried Commission-recommended legislation:

- Assembly Member Patricia C. Bates (architectural review and decisionmaking in common interest developments)
- Assembly Member Tom Harman (alternative dispute resolution in common interest developments)
- Assembly Committee on Judiciary (nonsubstantive reform of civil discovery)
- Senator Dick Ackerman (unincorporated association law)
- Senator Bill Morrow (authority of court commissioner)
- The late Senator Wm. "Pete" Knight (obsolete reporting requirements of state agencies)

The Commission held five one-day meetings during 2004. Meetings were held in Burbank, Oakland, and Sacramento.

Respectfully submitted,

William E. Weinberger  
*Chairperson*



## 2004-2005 ANNUAL REPORT

### Introduction

The California Law Revision Commission was created in 1953 and commenced operation in 1954 as the permanent successor to the Code Commission,<sup>1</sup> with responsibility for a continuing substantive review of California statutory and decisional law.<sup>2</sup> The Commission studies the law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission ordinarily works on major topics, assigned by the Legislature, that require detailed study and cannot easily be handled in the ordinary legislative process. The Commission's work is independent, nonpartisan, and objective.

The Commission consists of:<sup>3</sup>

- A Member of the Senate appointed by the Rules Committee
- A Member of the Assembly appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

The Commission may study only topics that the Legislature has authorized. The Commission now has a calendar of 21 topics.<sup>4</sup>

The Commission has submitted 358 recommendations to the Legislature, of which 334 have been enacted in whole or in substantial part.<sup>5</sup> Commission recommendations have resulted in the enactment of legislation affecting 22,341 sections of California

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1. See 1953 Cal. Stat. ch. 1445, operative September 9, 1953. The first meeting of the Commission was held on February 23, 1954.

2. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*). See also *1955 Report* [Annual Report for 1954] at 7, 1 Cal. L. Revision Comm'n Reports (1957).

3. For current membership, See "Personnel of Commission" *infra*.

4. See list of topics in *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

5. See *Legislative Action on Commission Recommendations*, Appendix 3 *infra*.

law: 4,410 sections amended, 9,468 sections added, and 8,463 sections repealed.

The Commission's recommendations, reports, and other selected materials are published in softcover and later collected in hardcover volumes. Recent materials are also available through the Internet. A list of past publications and information on obtaining printed or electronic versions are at the end of this Annual Report.<sup>6</sup>

### **2005 Legislative Program**

In 2005, the Commission plans to submit recommendations to the Legislature concerning the following subjects:

#### **Civil Procedure and Judicial Administration**

The Commission will recommend correction of obsolete cross-references to civil discovery provisions and revision of a number of civil discovery provisions to eliminate ambiguities or make minor substantive improvements.

#### **Evidence**

The Commission will recommend amendment of Evidence Code Section 912 governing waiver of the lawyer-client privilege, physician-patient privilege, and certain other evidentiary privileges to clarify how it applies to inadvertent disclosure of a privileged communication.

#### **Common Interest Development Law**

The Commission will recommend statutory clarification of the extent to which a common interest development's architectural restrictions are preempted by land use and public safety law.

#### **Unincorporated Associations**

*Unincorporated Association Governance.* The Commission will recommend basic default rules for the governance of an unincorporated association.

*Nonprofit Association Tort Liability.* The Commission will recommend a provision partially codifying the law on the tort

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6. See *Commission Publications*, Appendix 8 *infra*.

liability of a member, director, officer, or agent of a nonprofit association.

**Trusts and Estates**

The Commission will recommend clarification of the law governing ownership of amounts withdrawn from a joint account in a financial institution.

**Administrative Procedure**

The Commission will recommend statutory clarification of the procedure for emergency rulemaking by a state agency.

**Financial Privacy**

The Commission will recommend revision of state statutes governing financial privacy for coordination with the California Financial Information Privacy Act.<sup>7</sup> The Commission will also recommend further study of the matter, particularly with respect to possible federal preemption of California law.

**Major Studies in Progress**

During 2005, the Commission will work on the following major topics: mechanics lien law, common interest development law, discovery improvements from other jurisdictions, conforming the California Evidence Code to the Federal Rules of Evidence, oral argument in civil procedure, and contractual arbitration improvements from other jurisdictions. The Commission will also consider other subjects to the extent time permits.

**Mechanics Lien Law**

The Commission has reactivated work on mechanics lien law pursuant to a legislative request for a comprehensive review on a priority basis. The Commission has concluded that a “moderate” approach to general revision of the mechanics lien law is appropriate. This will involve maintaining the basic structure of existing law while improving its organization and simplifying and clarifying its drafting. The Commission plans to make significant progress on the study during 2005.

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7. 2003 Cal. Stat. ch. 241 [SB 1 (Speier)].

**Common Interest Development Law**

The Commission will continue its review of statutes affecting common interest housing developments with the goal of setting a clear, consistent, and unified policy regarding their formation and management and the transaction of real property interests located within them. The objective of the review is to clarify the law and eliminate unnecessary or obsolete provisions, to consolidate existing statutes in one place in the codes, and to determine to what extent common interest developments should be subject to regulation. To date the Commission has recommended and obtained enactment of revisions to clarify the organization of the CID governing statute, require associations to use notice and comment rulemaking procedures, standardize association architectural review procedures, and encourage alternative dispute resolution within associations.

**Discovery Improvements from Other Jurisdictions**

The Commission in 2005 will continue its review of discovery developments in other jurisdictions to determine whether they may be appropriate models for improvement of discovery practice in California. Initial recommendations will include statutory clarification and minor substantive improvements. Professor Gregory S. Weber of McGeorge School of Law has prepared a background study for the Commission.

**Conforming Evidence Code to Federal Rules of Evidence**

The Commission has commenced work to determine whether the California Evidence Code should be conformed to the Federal Rules of Evidence on points where they differ. This is a multi-year project that will cover the entire Evidence Code in discrete segments. During 2005 the Commission will continue to focus on the hearsay rule and its exceptions and on the role of judge and jury in evidentiary determinations. Professor Miguel Méndez of Stanford Law School is preparing a series of background studies for the Commission.

**Oral Argument in Civil Procedure**

Pursuant to a joint request from the Chair and Vice Chair of the Senate Judiciary Committee, during 2005 the Commission will commence a study to clarify the availability of oral argument in hearings under the Code of Civil Procedure.

**Contractual Arbitration Improvements from Other Jurisdictions**

During 2005 the Commission will commence a review of the law of other jurisdictions governing contractual arbitration, including the Revised Uniform Arbitration Act (2000), to determine whether there are any innovations or improvements that may be appropriate for adoption in California. Professor Roger P. Alford of Pepperdine Law School serves as the Commission's consultant on this project, and has published a background study.

**Other Subjects**

The major studies in progress described above will dominate the Commission's time and resources during 2005. The Commission will consider other subjects as time permits, including statutes of limitation in legal malpractice actions, equitable relief in a limited civil case, and clarification of rules governing enforcement and renewal of a money judgment under the Family Code.

**Calendar of Topics for Study**

The Commission's calendar includes 21 topics authorized by the Legislature for study.<sup>8</sup> The Commission recommends that one topic be deleted from its calendar and that one new topic be added.

**Criminal Sentencing**

The Commission's calendar of topics includes a review of whether the law governing criminal sentences for enhancements relating to weapons or injuries should be revised. Many of the proposed revisions under consideration by the Commission have been separately enacted into law. See AB 2173 (Wayne), chaptered as 2002 Cal. Stat. ch. 126. Other proposals appear too controversial or otherwise inappropriate for further Commission study. The

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8. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.



Commission recommends that this topic be deleted from its calendar.

### **Oral Argument in Civil Procedure**

The Commission has received a joint request from the Chair and Vice Chair of the Senate Judiciary Committee to conduct a study to clarify the availability of oral argument in hearings under the Code of Civil Procedure. The Commission has agreed to undertake the study. The Commission believes the project falls within its general statutory authority to study and recommend revisions to correct technical or minor substantive defects in state statutes.<sup>9</sup> However, it would be advisable also for the Legislature to add this matter to the Commission's calendar of topics. This would eliminate any question of jurisdiction, enable the Commission to recommend major substantive changes to existing law if the study shows they are needed, and keep the Legislature and interested parties apprised of the Commission's work.

### **Function and Procedure of Commission**

The principal duties of the Commission are to:<sup>10</sup>

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>11</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.

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9. Gov't Code § 8298.

10. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra*.

11. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.<sup>12</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study.<sup>13</sup> However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.<sup>14</sup> Additionally, a concurrent resolution<sup>15</sup> or statute<sup>16</sup> may directly confer authority to study a particular subject.

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12. Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290. See "Report on Statutes Repealed by Implication or Held Unconstitutional" *infra*.

13. Gov't Code § 8293. Section 8293 requires a concurrent resolution authorizing the Commission to study topics contained in the calendar of topics set forth in the Commission's regular report to the Legislature. Section 8293 also requires that the Commission study any topic that the Legislature by concurrent resolution or statute refers to the Commission for study.

14. Gov't Code § 8298.

15. For an example of a concurrent resolution referring a specific topic to the Commission for study, see 2002 Cal. Stat. res. ch. 167 (ACR 125) (financial privacy study).

16. Code of Civil Procedure Section 703.120(a) requires the Commission to review statutes providing for exemptions from enforcement of money judgments every 10 years and to recommend any needed revisions. The Commission also has continuing statutory authority to study enforcement of judgments pursuant to Code of Civil Procedure Section 703.120(b).

Government Code Section 70219 requires the Commission, in consultation with the Judicial Council, to perform follow-up studies taking into consideration the experience in courts that have unified. For a list of specific studies, see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998).

Government Code Section 71674 requires the Commission to recommend repeal of provisions made obsolete by the Trial Court Employment Protection

### Background Studies

The Commission's work on a recommendation typically begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field who is retained as a consultant.<sup>17</sup> Law professors and practicing attorneys who serve as consultants have already acquired the considerable knowledge necessary to understand the specific problems under consideration, and receive little more than an honorarium for their services. From time to time, expert consultants are also retained to advise the Commission at meetings.

### Recommendations

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to interested persons and organizations, including the State Bar, local and specialized bar associations, public interest organizations, and business and professional associations. Notice of the availability of

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and Governance Act (Gov't Code § 71600 *et seq.*), Lockyer-Isenberg Trial Court Funding Act of 1997 (1997 Cal. Stat. ch. 850), and the implementation of trial court unification.

Statutory authority may be uncodified. See, e.g., 1996 Cal. Stat. ch. 856, § 12 (study of revisions of Public Utilities Code resulting from utility deregulation, in consultation with Public Utilities Commission).

17. The following persons serve as Commission consultants: James E. Acret, Thelen, Reid & Priest, Pacific Palisades; Prof. Roger P. Alford, Pepperdine University School of Law; Prof. Michael Asimow, UCLA Law School; Prof. David M. English, University of Missouri Law School; Prof. Susan F. French, UCLA Law School; David Gould, McDermott, Will & Emery, Los Angeles; Brian Gurwitz, Deputy District Attorney, Orange County; Prof. Edward C. Halbach, Jr., Berkeley; Judge Joseph B. Harvey (ret.), Susanville; Keith Honda, Principal Administrative Analyst, Monterey County; Prof. Michael Hone, University of San Francisco School of Law; Gordon Hunt, Hunt, Ortmann, Blasco, Palfy & Rossell, Pasadena; Prof. Gideon Kanner, Berger & Norton, Burbank (formerly with Loyola Law School); Prof. J. Clark Kelso, McGeorge School of Law, Capital Center for Government Law and Policy; Prof. William M. McGovern, UCLA Law School; Prof. Miguel A. Méndez, Stanford Law School; Mark Overland, Overland & Gits, Santa Monica; Prof. Frederick Tung, University of San Francisco School of Law; Prof. Gerald F. Uelmen, Santa Clara University School of Law; Prof. Gregory S. Weber, McGeorge School of Law; Judge David S. Wesley, Los Angeles Superior Court.

the tentative recommendation is mailed to interested persons on the Commission's mailing list and publicized in legal newspapers and other relevant publications. Notice is also posted on the Commission's website and emailed to interested persons.

Comments received on the tentative recommendation are considered by the Commission in determining what recommendation, if any, will be made to the Legislature.<sup>18</sup> When the Commission has reached a conclusion on the matter,<sup>19</sup> its recommendation to the Legislature (including a draft of any necessary legislation) is published and distributed in printed form and in digital form on the Internet. If a background study has been prepared in connection with the recommendation, it may be published by the Commission or in a law review.<sup>20</sup>

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18. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A. J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

19. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission. Dissents are noted in the minutes of the meeting at which the recommendation is approved.

20. For recent background studies published in law reviews, see Alford, *Report to Law Revision Commission Regarding Recommendations for Changes to California Arbitration Law*, 4 Pepp. Disp. Resol. L.J. 1 (2004); Méndez, *California Evidence Code - Federal Rules of Evidence, I. Hearsay and Its Exceptions: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 351 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, II. Expert Testimony and the Opinion Rule: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 411 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, III. The Role of Judge and Jury: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 351 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, IV. Presumptions and Burden of Proof: Conforming the California Evidence Code to the Federal Rules of Evidence*, 38 U.S.F. L. Rev. 139 (2003); Tung, *After Orange County: Reforming California Municipal Bankruptcy Law*, 53 Hastings L.J. 885 (2002); Weber, *Potential Innovations in Civil Discovery: Lessons for California from the State and Federal Courts*, 32 McGeorge L. Rev. 1051 (2001).

**Official Comments**

The Commission ordinarily prepares an official Comment explaining each section it recommends for enactment, amendment, or repeal. The Comments are included in the Commission's published recommendations. A Comment indicates the derivation of a section and often explains its purpose, its relation to other law, and potential issues concerning its meaning or application.<sup>21</sup>

**Commission Materials as Legislative History**

Commission recommendations are printed and sent to both houses of the Legislature, as well as to the Legislative Counsel and Governor.<sup>22</sup> Receipt of a recommendation by the Legislature is noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.<sup>23</sup>

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.<sup>24</sup> A copy of the recommendation is provided to legislative committee members and staff before the bill is heard and throughout the legislative process. The legislative committees

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For a list of background studies published in law reviews before 2000, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990); 32 Cal. L. Revision Comm'n Reports 585 n.14 (2002).

21. Commission Comments are published by Lexis Law Publishing and West Group in their print and CD-ROM editions of the annotated codes, and printed in selected codes prepared by other publishers. Comments are also available on Westlaw and Lexis.

22. See Gov't Code §§ 8291, 9795; see also *Reynolds v. Superior Court*, 12 Cal. 3d 834, 847 n.18, 528 P.2d 45, 53 n.18, 117 Cal. Rptr. 437, 445 n.18 (1974) (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

23. See, e.g., Senate J. Aug. 18, 2003, at 2031 (noting receipt of 2002-2003 recommendations and their transmittal to the Committee on Judiciary).

24. See, e.g., Office of Chief Clerk, California State Assembly, California's Legislature 126-27 (2000) (discussing purpose and function of legislative committee system).

rely on the recommendation in analyzing the bill and making recommendations to the Legislature concerning it.<sup>25</sup>

If an amendment is made to the bill that renders one of the Commission's original Comments inconsistent, the Commission generally will adopt a revised Comment and provide it to the committee. The Commission also provides this material to the Governor's office once the bill has passed the Legislature and is before the Governor for action. These materials are a matter of public record.

Until the mid-1980's, a legislative committee, on approving a bill implementing a Commission recommendation, would adopt the Commission's recommendation as indicative of the committee's intent in approving the bill.<sup>26</sup> If a Comment required revision, the revised Comment would be adopted as a legislative committee Comment. The committee's report would be printed in the journal of the relevant house.<sup>27</sup>

The Legislature has discontinued the former practice due to increased committee workloads and an effort to decrease the volume of material reprinted in the legislative journals. Under current practice, a legislative committee relies on Commission materials in its analysis of a bill, but does not separately adopt the materials. Instead, the Commission makes a report detailing the

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25. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 542, 28 P.3d 151, 166, 110 Cal. Rptr. 2d 412, 430 (2001), that a Commission Comment might be entitled to less weight based on speculation that the Legislature may not have read and endorsed every statement in the Commission's report. That suggestion belies the operation of the committee system in the Legislature. See White, *Sources of Legislative Intent in California*, 3 Pac. L.J. 63, 85 (1972) ("The best evidence of legislative intent must surely be the records of the legislature itself and the reports which the committees relied on in recommending passage of the legislation.").

26. See, e.g., *Baldwin v. State*, 6 Cal. 3d 424, 433, 491 P.2d 1121, 1126, 99 Cal. Rptr. 145, 150 (1972). For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

27. For an example of such a report, see *Report of Senate Committee on Judiciary on Assembly Bill 3472*, Senate J. June 14, 1984, reprinted in 18 Cal. L. Revision Comm'n Reports 1, 115 (1986).

legislative history of the bill, including any revised Comments. Bill reports are published as appendices to the Commission's annual reports.<sup>28</sup>

### **Use of Commission Materials To Determine Legislative Intent**

Commission materials that have been placed before and considered by the Legislature are legislative history, are declarative of legislative intent,<sup>29</sup> and are entitled to great weight in construing statutes.<sup>30</sup> The materials are a key interpretive aid for practitioners as well as courts,<sup>31</sup> and courts may judicially notice and rely on them.<sup>32</sup> Courts at all levels of the state<sup>33</sup> and federal<sup>34</sup> judicial

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28. Commission reports have in the past been published as well in the legislative journals. See, e.g., *In re Marriage of Neal*, 153 Cal. App. 3d 117, 124, 200 Cal. Rptr. 341, 345 (1984) (noting that Chairman of Senate Judiciary Committee, when reporting on AB 26 on Senate floor, moved that revised Commission report be printed in Senate Journal as evidence of legislative intent).

29. See, e.g., *People v. Williams*, 16 Cal. 3d 663, 667-668, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) ("The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it. [Citation]").

30. See, e.g., *Hale v. Southern Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal. App. 3d 391, 400, fn. 8 [276 Cal. Rptr. 524]; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal. App. 3d 524, 535, fn. 7 [260 Cal. Rptr. 713].) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal. App. 4th 23, 30, fn. 10 [17 Cal. Rptr. 2d 340].)

31. Cf. 7 B. Witkin, *Summary of California Law Constitutional Law* § 96, at 149 (9th ed. 1988) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

32. See, e.g., *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

33. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Administrative Management Services, Inc. v. Fidelity & Deposit Co.*, 129 Cal. App. 3d 484, 181

systems depend on Commission materials to construe statutes enacted on Commission recommendation.<sup>35</sup> Appellate courts alone have cited Commission materials in several thousand published opinions.<sup>36</sup>

Commission materials have been used as direct support for a court's interpretation of a statute,<sup>37</sup> as one of several indicia of legislative intent,<sup>38</sup> to explain the public policy behind a statute,<sup>39</sup> and on occasion to demonstrate (by their silence) the Legislature's

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Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

34. See, e.g., *California v. Green*, 399 U.S. 149 (1970) (United States Supreme Court); *Southern Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950 (9th Cir. 1997) (federal court of appeal); *Williams v. Townsend*, 283 F. Supp. 580 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)*, 204 B.R. 976 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289 (Bankr. S.D. Cal. 1984) (bankruptcy court).

35. See, e.g., *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature's intent); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence clear legislative intent of law).

36. In this connection it should be noted that the Law Revision Commission should not be cited as the "Law Revision Committee" or as the "Law Review Commission." See, e.g., *Venerable v. City of Sacramento*, 185 F. Supp. 2d 1128, 1132 (E.D. Cal. 2002) (Law Revision "Committee"); *Ryan v. Garcia*, 27 Cal. App. 4th 1006, 1010 n.2, 33 Cal. Rptr. 2d 158, 160 n.2 (1994) (Law "Review" Commission).

37. See, e.g., *People v. Ainsworth*, 45 Cal. 3d 984, 1015, 755 P.2d 1017, 1036, 248 Cal. Rptr. 568, 586 (1988).

38. See, e.g., *Heieck & Moran v. City of Modesto*, 64 Cal. 2d 229, 233 n.3, 411 P.2d 105, 108 n.3, 49 Cal. Rptr. 377, 380 n.3 (1966).

39. See, e.g., *Southern Cal. Gas Co. v. Public Utils. Comm'n*, 50 Cal. 3d 31, 38 n.8, 784 P.2d 1373, 1376 n.8, 265 Cal. Rptr. 801, 804 n.8 (1990).



intention not to change the law.<sup>40</sup> The Legislature's failure to adopt a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.<sup>41</sup>

Commission materials are entitled to great weight, but they are not conclusive.<sup>42</sup> While the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every consistent or inconsistent case is noted in the Comments,<sup>43</sup> nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>44</sup> Hence, failure of the Comment to note every change the recommendation would make in prior law, or to refer to a consistent or inconsistent judicial decision, is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>45</sup>

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40. See, e.g., *State ex rel. State Pub. Works Bd. v. Stevenson*, 5 Cal. App. 3d 60, 64-65, 84 Cal. Rptr. 742, 745-46 (1970) (finding that Legislature had no intention of changing existing law where "not a word" in Commission's reports indicated intent to abolish or emasculate well-settled rule).

41. See, e.g., *Nestle v. City of Santa Monica*, 6 Cal. 3d 920, 935-36, 496 P.2d 480, 490, 101 Cal. Rptr. 568, 578 (1972).

42. See, e.g., *Redevelopment Agency v. Metropolitan Theatres Corp.*, 215 Cal. App. 3d 808, 812, 263 Cal. Rptr. 637, 639 (1989) (Comment does not override clear and unambiguous statute). Commission materials are but one indicium of legislative intent. See, e.g., *Estate of Joseph*, 17 Cal. 4th 203, 216, 949 P.2d 472, 480, 70 Cal. Rptr. 2d 619, 627 (1998). The accuracy of a Comment may also be questioned. See, e.g., *Buzgheia v. Leasco Sierra Grove*, 30 Cal. App. 4th 766, 774, 36 Cal. Rptr. 2d 144, 149 (1994); *In re Thomas*, 102 B.R. 199, 202 (Bankr. E.D. Cal. 1989).

43. Cf. *People v. Coleman*, 8 Cal. App. 3d 722, 731, 87 Cal. Rptr. 554, 559 (1970) (Comments make clear intent to reflect existing law even if not all supporting cases are cited).

44. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 885, 109 Cal. Rptr. 421, 426-27 (1973) (noting that decisional law cited in Comment was distinguished by the California Supreme Court in a case decided after enactment of the Commission recommendation).

45. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered*

Some types of Commission materials may not properly be relied on as evidence of legislative intent. Courts have on occasion cited preliminary Commission materials such as tentative recommendations and correspondence in support of their construction of a statute.<sup>46</sup> This is not appropriate because the material is not placed before the Legislature during its consideration of the legislation.<sup>47</sup> While these materials may be indicative of the Commission's intent in proposing the legislation, it is only the Legislature's intent in adopting the legislation that is entitled to weight in construing the statute.<sup>48</sup>

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.<sup>49</sup> However, documents prepared by or for the Commission may be used by the courts for their analytical value, apart from their role in statutory construction.<sup>50</sup>

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*Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973); 1974 Cal. Stat. ch. 227.

46. See, e.g., *Yamaha Corp. v. State Bd. of Equalization*, 19 Cal. 4th 1, 12-13, 960 P.2d 1031, 1037, 78 Cal. Rptr. 2d 1, 7 (1998) (tentative recommendation). However, in some cases, proposed legislation will be based on a tentative, rather than final, Commission recommendation. See, e.g., *Estate of Archer*, 193 Cal. App. 3d 238, 243, 239 Cal. Rptr. 137, 140 (1987). In that event, reliance on the tentative recommendation is proper.

See also *Ilkhchooyi v. Best*, 37 Cal. App. 4th 395, 406, 45 Cal. Rptr. 2d 766, 772-73 (1995) (letter responding to tentative recommendation); D. Henke, *California Legal Research Handbook* § 3.51 (1971) (background studies).

47. The Commission concurs with the opinion of the court in *Juran v. Epstein*, 23 Cal. App. 4th 882, 894 n.5, 28 Cal. Rptr. 2d 588, 594 n.5 (1994), that staff memoranda to the Commission should not be considered as legislative history.

48. *Cf. Rittenhouse v. Superior Court*, 235 Cal. App. 3d 1584, 1589, 1 Cal. Rptr. 2d 595, 598 (1991) (linking Commission's intent and Legislature's intent); *Guthman v. Moss*, 150 Cal. App. 3d 501, 508, 198 Cal. Rptr. 54, 58 (1984) (determination of Commission's intent used to infer Legislature's intent).

49. See, e.g., *Duarte v. Chino Community Hosp.*, 72 Cal. App. 4th 849, 856 n.3, 85 Cal. Rptr. 2d 521, 525 n.3 (1999).

50. See, e.g., *Sierra Club v. San Joaquin Local Agency Formation Comm'n*, 21 Cal. 4th 489, 502-03, 981 P.2d 543, 551-52, 87 Cal. Rptr. 2d 702, 712 (1999) (unenacted Commission recommendation useful as "opinion of a learned panel"); *Hall v. Hall*, 222 Cal. App. 3d 578, 585, 271 Cal. Rptr. 773, 777 (1990).

## **Publications**

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.<sup>51</sup> Commission materials are also distributed to interest groups, lawyers, law professors, courts, district attorneys, and law libraries throughout the state.

The Commission's reports, recommendations, and studies are republished in hardcover volumes that serve as a permanent record of the Commission's work and, it is believed, are a valuable contribution to the legal literature of California. These volumes are available at many county law libraries and at some other libraries. About half of the hardcover volumes are out of print, but others are available for purchase.<sup>52</sup> Publications that are out of print are available as electronic files.<sup>53</sup>

## **Electronic Publication and Internet Access**

Since 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.<sup>54</sup> Interested persons with Internet access can find the current agenda, meeting minutes, background studies, tentative and final recommendations, staff memoranda, and general background information.

Since 2002, all Commission publications and staff memoranda are available as electronic files. Recent publications and memoranda may be downloaded from the Commission's website. Files that are not on the website are available on request.<sup>55</sup>

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(Commission staff report most detailed analysis of statute available); *W.E.J. v. Superior Court*, 100 Cal. App. 3d 303, 309-10, 160 Cal. Rptr. 862, 866 (1979) (law review article prepared for Commission provides insight into development of law); *Schonfeld v. City of Vallejo*, 50 Cal. App. 3d 401, 407 n.4, 123 Cal. Rptr. 669, 673 n.4 (1975) (court indebted to many studies of Commission for analytical materials).

51. See Gov't Code § 8291. For limitations on Section 8291, see Gov't Code §§ 9795, 11094-11099.

52. See *Commission Publications*, Appendix 8 *infra*.

53. See "Electronic Publication and Internet Access" *infra*.

54. The URL for the Commission's website is <<http://www.clrc.ca.gov>>.

55. See *Commission Publications*, Appendix 8 *infra*.

**Electronic Mail**

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence, if the email message includes the name and regular mailing address of the sender. Email to the Commission may be sent to *commission@clrc.ca.gov*.

The Commission distributes a large portion of its meeting agendas, staff memoranda, and other written materials electronically, by means of its website and email distribution lists. The Commission encourages use of email as an inexpensive and expedient means of communication with the Commission.

**MCLE Credit**

The Commission is approved by the State Bar of California as a minimum continuing legal education provider. Participants and attendees at Commission meetings may be eligible to receive MCLE credit. To receive credit for participation or attendance at a meeting, a person must register at the meeting. Meeting materials are available free of charge on the Internet<sup>56</sup> or may be purchased in advance from the Commission.

**Personnel of Commission**

As of November 19, 2004, the following persons were members of the Law Revision Commission:

**Legislative Members** <sup>57</sup>

Assembly Member Ellen M. Corbett, San Leandro  
Senator Bill Morrow, San Juan Capistrano

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56. See “Electronic Publication and Internet Access” *supra*.

57. The Senate and Assembly members of the Commission serve at the pleasure of their respective appointing powers — the Senate Committee on Rules and the Speaker of the Assembly. Gov’t Code § 8281.

<b>Members Appointed by Governor</b> <sup>58</sup>	<b><i>Term Expires</i></b>
William E. Weinberger, Los Angeles <i>Chairperson</i>	October 1, 2005
Edmund L. Regalia, Walnut Creek <i>Vice Chairperson</i>	October 1, 2005
Frank Kaplan, Santa Monica	October 1, 2005
Vacancy	October 1, 2007
Vacancy	October 1, 2007
Vacancy	October 1, 2007
Vacancy	October 1, 2007

**Legislative Counsel** <sup>59</sup>

Diane F. Boyer-Vine, Sacramento

Effective September 1, 2004, the Commission elected William E. Weinberger as Chairperson (succeeding Frank Kaplan), and Edmund L. Regalia as Vice Chairperson (succeeding William E. Weinberger). The terms of the new officers end August 31, 2005.

The following persons are on the Commission's staff:

*Legal*

NATHANIEL STERLING  
*Executive Secretary*

BRIAN HEBERT  
*Assistant Executive  
Secretary*

BARBARA S. GAAL  
*Staff Counsel*

*Administrative-Secretarial*

VICTORIA V. MATIAS  
*Secretary*

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58. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

59. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

During the winter and spring of 2004, Jeffrey Vize, a student at UC Davis Law School, worked for the Commission in Sacramento through the work study program. During the spring of 2004, Adam Arant, a student at UC Davis Law School, served as an extern for the Commission.

### **Commission Budget**

The Commission's operations are funded from the state general fund. The amount appropriated to the Commission for the 2004-05 fiscal year from the general fund is \$512,000. This amount may be further reduced by an indeterminate reduction not to exceed 20% — the Commission's share of an unallocated reduction of state general fund operational expenses pursuant to Section 4.10(a) of the 2004-05 budget act.

Budget reductions over the past several years have a direct and negative impact on the Commission's staffing and operations. The Commission is now operating at approximately two-thirds its optimal level, with a corresponding reduction in productivity.

The Commission's general fund allocation is supplemented by \$15,000 budgeted for income generated from sale of documents to the public, representing reimbursement for the production and shipping cost of the documents.

The Commission also receives substantial donations of necessary library materials from the legal publishing community, especially California Continuing Education of the Bar, Lexis Law Publishing, and West Group. The Commission receives additional library materials from other legal publishers and from other law reform agencies on an exchange basis, and has full access to the Stanford University Law Library and the McGeorge Law School Library. The Commission is grateful for their contributions.

### **Other Activities**

The Commission is directed by statute to cooperate with bar associations and other learned, professional, or scientific

associations, institutions, or foundations in any manner suitable for the fulfillment of the purposes of the Commission.<sup>60</sup>

#### **National Conference of Commissioners on Uniform State Laws**

The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws.<sup>61</sup> The Legislative Counsel and Commission member, Diane F. Boyer-Vine, is a member of the California Commission on Uniform State Laws and the National Conference of Commissioners on Uniform State Laws. The Commission's Executive Secretary, Nathaniel Sterling, is an associate member of the National Conference.

Mr. Sterling attended the National Conference in Portland, Oregon, in August 2004. Mr. Sterling also served as a member of the National Conference drafting committees on revision of the Uniform Durable Power of Attorney Act and the Model State Administrative Procedure Act during 2004.

#### **Education**

The Commission's Assistant Executive Secretary, Brian Hebert, participated in a panel discussion of "Role of Government Dispute Resolution" at the Community Association Institute's 53rd National Conference and Exposition in San Diego in May 2004.

#### **Legislative History of Recommendations in the 2004 Legislative Session**

The Commission's recommendations were included in six bills recommended for enactment in the 2004 legislative session. The six bills were enacted.

#### **Authority of Court Commissioner**

Senate Bill 1225 (2004 Cal. Stat. ch. 49) was introduced by Senator Bill Morrow to effectuate the Commission recommendation on *Authority of Court Commissioner*, 33 Cal. L.

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60. Gov't Code § 8296.

61. Gov't Code § 8289.

Revision Comm'n Reports 673 (2003). The recommendation was enacted as submitted.

The bill also included revisions to Government Code Section 71601 previously recommended by the Commission in *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002). The revisions were chaptered out on an unrelated matter by 2004 Cal. Stat. ch. 227, § 64.

#### **Unincorporated Associations**

Senate Bill 1746 (2004 Cal. Stat. ch. 178) was introduced by Senator Dick Ackerman to effectuate the Commission recommendation on *Unincorporated Associations*, 33 Cal. L. Revision Comm'n Reports 729 (2003). The recommendation was enacted, with amendments. See *Report of the California Law Revision Commission on Chapter 178 of the Statutes of 2004 (Senate Bill 1746)*, 34 Cal. L. Revision Comm'n Reports xxx (2004) (Appendix 4 *infra*).

#### **Nonsubstantive Reform of Civil Discovery**

Assembly Bill 3081 (2004 Cal. Stat. ch. 182) was introduced by the Assembly Judiciary Committee to effectuate the Commission recommendation on *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). The recommendation was enacted, with technical amendments. See *Report of the California Law Revision Commission on Chapter 182 of the Statutes of 2004 (Assembly Bill 3081)*, 34 Cal. L. Revision Comm'n Reports xxx (2004) (Appendix 5 *infra*).

#### **Obsolete Reporting Requirements**

Senate Bill 111 (2004 Cal. Stat. ch. 193) was introduced by the late Senator Wm. "Pete" Knight to effectuate the Commission recommendation on *Obsolete Reporting Requirements*, 33 Cal. L. Revision Comm'n Reports 267 (2003). The recommendation was enacted, with technical amendments.

#### **Architectural Review and Decisionmaking in Common Interest Developments**

Assembly Bill 2376 (2004 Cal. Stat. ch. 346) was introduced by Assembly Member Patricia C. Bates to effectuate the Commission



recommendation on *Common Interest Development Law: Architectural Review and Decisionmaking*, 34 Cal. L. Revision Comm'n Reports xxx (2004). The recommendation was enacted, with amendments. See *Report of the California Law Revision Commission on Chapter 346 of the Statutes of 2004 (Assembly Bill 2376)*, 34 Cal. L. Revision Comm'n Reports xxx (2004) (Appendix 6 *infra*).

#### **Alternative Dispute Resolution in Common Interest Developments**

Assembly Bill 1836 (2004 Cal. Stat. ch. 754) was introduced by Assembly Member Tom Harman to effectuate the Commission recommendation on *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003). The recommendation was enacted, with amendments. See *Report of the California Law Revision Commission on Chapter 754 of the Statutes of 2004 (Assembly Bill 1836)*, 34 Cal. L. Revision Comm'n Reports xxx (2004) (Appendix 7 *infra*).

#### **Report on Statutes Repealed by Implication or Held Unconstitutional**

Government Code Section 8290 provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared<sup>62</sup> and has the following to report:

- xxx decisions holding a state statute repealed by implication have been found.
- xxx decisions of the United States Supreme Court holding a state statute unconstitutional have been found.

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62. This study has been carried through xxx Cal. 4th xxx and xxx S.Ct. xxx (xxx Term).

- xxx decisions of the California Supreme Court holding a state statute unconstitutional have been found.

### **Recommendations**

The Commission respectfully recommends that the Legislature authorize the Commission to study the topic of oral hearings in civil procedure and to remove from the Commission's calendar of topics the review of the law governing criminal sentences for enhancements relating to weapons or injuries.

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provisions referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional" *supra*, to the extent they have been held unconstitutional and have not been amended or repealed.

